

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAY - 5 1992

Federal Communications Commission
Office of the Secretary

In re Applications of)	MM Docket No. 92-69
MISSISSIPPI VALLEY BROADCASTERS, INC.)	File No. BPH-910118MA
TCOM, INC.)	File No. BPH-910122MA
BROADCAST PROPERTIES)	File No. BPH-910122MJ
OF LA CROSSE, INC.)	
For a Construction Permit)	
For a New FM Station)	
on Channel 292C3 (106.3 mHz))	
LA CROSSE, Wisconsin)	
TO: Administrative Law Judge		
Joseph P. Gonzales		

JOINT REQUEST FOR APPROVAL OF AGREEMENT

Mississippi Valley Broadcasters, Inc. (hereafter Mississippi Valley), TCOM, Inc. (hereafter TCOM), and Broadcast Properties of La Crosse, Inc. (hereafter Broadcast Properties), by their attorneys, and pursuant to Section 73.3525 of the Commission's Rules, hereby request the Presiding Judge to approve the annexed Merger Agreement (Appendix A hereto) and upon such approval to dismiss the applications of TCOM and Broadcast Properties with prejudice. In support thereof, Mississippi Valley, TCOM and Broadcast Properties respectfully state as follows:

1. There are pending before the Commission the applications of Mississippi Valley, TCOM and Broadcast Properties for authority

No. of Copies rec'd
1st A B C D E

076

to construct and operate a new FM broadcast station on Channel 292C3 (106.3 MHz) at La Crosse, Wisconsin.

2. Mississippi Valley, TCOM and Broadcast Properties have concluded a Merger Agreement which, upon approval, will eliminate their competition for the Channel 293C3 frequency, thereby conserving Commission resources, and paving the way for the earlier institution of FM service at La Crosse. Supporting declarations, consistent with regulatory requirements, are annexed hereto as Appendix B.

3. Under the Merger Agreement, TCOM, Broadcast Properties and Mississippi Valley's present sole shareholder (Howard G. Bill) will each have an equal one-third interest in Mississippi Valley (the surviving applicant) and will be entitled to appoint one member each to Mississippi Valley's Board of Directors. Bill, TCOM principal Patricia A. Turner and Broadcast Properties principal, Philip Kelly, will also serve as officers of Mississippi Valley (See Appendix A hereto).

4. Under the Merger Agreement, TCOM, Broadcast Properties and Bill will also share equally in the cost associated with the construction and initial (three months) operation of the proposed Channel 292C3 station (Ibid.). In sum, under the merger arrangement, it is the intention of the parties that they will share equally in the risks and rewards of the business venture.

5. Under its new settlement policies, the Commission has announced an intention to "examine closely any proposal to settle among competing applicants by merger of the applicants to ensure

that the merger is bona fide." Comparative Broadcast Proceedings (Settlement Agreement Payments), 6 FCC Rcd 2901, 2902, 69 RR2d 175 (1991). As an aid in its scrutiny of merger settlement arrangements, the Commission requires applicants "to submit a full explanation and justification of the parties exchange of consideration . . . " (Ibid.). There is annexed hereto as Appendix C the Declaration of Bill setting forth a full explanation and justification of the parties' exchange of consideration.

6. Mississippi Valley is also tendering concurrently herewith a Motion for Leave to Amend and an amendment to its application. The amendment provides inter alia legal information to effectuate the merger and technical information called for by the Chief, Audio Services Division in his Hearing Designation Order, DA 92-411, released April 15, 1992. The amendment also withdraws the Integration Statements of TCOM, Broadcast Properties and Mississippi Valley and the divestment commitments of Mississippi Valley.

7. In the HDO (¶4), the Chief acknowledged that Broadcast Properties is the licensee of WXLN(FM), La Crosse, Wisconsin and that Broadcast Properties had represented that it will divest WXLN in the event of a grant of its application. The Chief provided, therefore, that in the event of grant of Broadcast Properties' application, it will be required to divest WXLN prior to the commencement of program test authority on Channel 292C3.

8. Broadcast Properties is not withdrawing its commitment to divest WXLN, because under the present Multiple Ownership Rules

(Section 73.3555) it may not have an ownership interest in or connections with two FM broadcast stations licensed to serve La Crosse. The Commission recently announced, however, revisions in its Multiple Ownership Rules, which become effective August 1, 1992, and would permit Broadcast Properties to retain its interest in and connections with Station WXLN and the Channel 296C3 station. Revision of Radio Rules and Policies, FCC 92-97, released April 10, 1992, (¶¶40, 72).

9. In particular, the La Crosse radio metro market, as designated by Arbitron, is comprised of twelve radio stations (see Appendix D hereto). Under the new Section 73.3555(a)(1), La Crosse is, therefore, a radio market with 14 or fewer commercial stations, wherein one party may own up to three commercial radio stations,^{1/} no more than two of which are in the same service (AM or FM), provided that the owned stations represent less than 50 percent of the stations in the market. Under the revised multiple ownership rules, therefore, Broadcast Properties would be able to own WXLN and also have an interest in the Channel 293C3 station.

10. In these circumstances, it is urged that the Mississippi Valley application be granted upon a condition that Broadcast Properties divest itself of its interests in WXLN prior to the grant of program tests for the Channel 292C3 station. Broadcast Properties, however, reserves the right to seek the deletion of the

^{1/} Broadcast Properties is also the licensee of Station WLFN(AM), La Crosse.

condition in the event that the new ownership rules do go into effect and Broadcast Properties is thereby eligible to retain WXLN.

WHEREFORE, Mississippi Valley, TCOM and Broadcast Properties request the Presiding Judge to approve the Merger Agreement and upon such approval to dismiss the application of TCOM and Broadcast Properties with prejudice.

Respectfully submitted,

MISSISSIPPI VALLEY BROADCASTERS, INC.

By: James K. Edmundson
James K. Edmundson

GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
(202) 408-7162

TCOM, INC.

By: Stanley G. Emert, Jr.
Stanley G. Emert, Jr. JKE

Bryce & Emert
Post Office Box 52225
Knoxville, Tennessee 37950-2225
(615) 690-5566

**BROADCAST PROPERTIES OF
LA CROSSE, INC.**

By: Christopher J. Reynolds
Christopher J. Reynolds J K E

Law Offices of
Christopher J. Reynolds
Post Office Box 2809
Prince Frederick, Maryland 20678
(410) 535-9220

DATED: May 5, 1992
[29695]

APPENDIX A

MERGER AGREEMENT

This **AGREEMENT** is made and entered into by and between Mississippi Valley Broadcasters, Inc. (hereafter Mississippi Valley), TCOM, Inc. (hereafter TCOM), Broadcast Properties of La Crosse, Inc. (hereafter Broadcast Properties), and Howard G. Bill (hereafter Bill):

WHEREAS, Mississippi Valley is a corporation organized under the laws of the State of Minnesota, in which Bill owns 1,000 common voting shares, representing all of the issued and outstanding stock of the corporation;

WHEREAS, Mississippi Valley, TCOM and Broadcast Properties (hereafter the parties applicant) are mutually exclusive applicants before the Federal Communications Commission (hereafter Commission) for authority to construct and operate a new FM broadcast station on Channel 292C3 (106.3 MHz) at La Crosse, Wisconsin;

WHEREAS, the parties applicant respective applications have been consolidated and designated for hearing by Hearing Designation Order (hereafter HDO), DA 92-411, released April 15, 1992; and

WHEREAS, the parties applicant wish to resolve their differences by a merger of interests and thereby pave the way for the early institution of new FM service at La Crosse.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the parties agree as follows:

1. **Merger of Interests.** Bill hereby agrees to assign a 1/3 interest in Mississippi Valley to TCOM and a 1/3 interest in Mississippi Valley to Broadcast Properties, so that Bill, TCOM and Broadcast Properties will each have an equal interest in the corporation. Bill further agrees to modify the By-Laws of Mississippi Valley to provide for a Board of Directors comprised of three members, one member to be appointed by Bill, one member to be appointed by TCOM and one member to be appointed by Broadcast Properties. Bill further agrees, as sole present director of Mississippi Valley, to elect Patricia A. Turner as Chairman of the Board of Directors and Vice President of Mississippi Valley and Philip Kelly as Secretary and Treasurer of Mississippi Valley.

2. **Amendment.** Mississippi Valley shall promptly seek leave of the Commission or its delegatee in MM Docket No. 92-69 to amend its Statement of Legal Qualifications (BPH-910118MA, Section II) as described in Paragraph 1 above. Bill shall also promptly seek the leave of the Commission or its delegatee to provide the environmental information called for in Paragraph 9 of the HDO.

3. **Dismissal of TCOM's and Broadcast Properties' Applications.** Subject to the approval of this Agreement by the Commission or its delegatee, TCOM and Broadcast Properties shall dismiss with prejudice their construction permit applications for a new FM

broadcast station at La Crosse, Wisconsin (FCC File Nos. BPH-910122MA and BPH-910122MJ).

4. **Fee Refunds.** The parties applicant shall each seek a refund of their respective hearing fees. The Mississippi Valley hearing fee shall be disbursed to Bill.

5. **Construction.** TCOM, Broadcast Properties and Bill each agree to share equally in the costs associated with the construction and initial (three months) operation of the Channel 292C3 station. Specifically, TCOM, Broadcast Properties and Bill agree to seek debt financing in an amount approved by the Board of Directors of Mississippi Valley but not to exceed \$150,000 to cover the costs of construction and initial operation of the station. TCOM, Broadcast Properties and Bill further agree that if required by the lending institution, TCOM and its principals, Broadcast Properties and its principals and Bill shall jointly and severally guarantee the repayment of the loan. TCOM, Broadcast Properties and Bill further agree that upon the call of the Board of Directors, each of them shall provide equity financing in an amount not to exceed \$40,000 each for construction costs and \$10,000 each for operating costs. If TCOM, Broadcast Properties and/or Bill are unable to meet a capital call for equity financing in the amounts described above, Mississippi Valley shall have the option to acquire the shares of the non-contributing shareholder in consideration for (a) its capital costs previously made and (b) an amount equal to the application expenses of the non-contributing member but not to exceed \$10,000.

6. **Put.** During the 180 day period after Mississippi Valley has commenced program tests on Channel 292C3, TCOM, Broadcast Properties and Bill shall each have the right to put their shares to the corporation for an amount equal to (a) their application expenses but not to exceed \$10,000, (b) their capital contributions previously made, and (c) an amount equal to the fair market value of their respective interests but not to exceed \$25,000.

7. **Best efforts.** The parties to this Agreement agree to use their individual and joint best efforts to:

(a) Obtain Commission approval of this Agreement;

(b) Promptly prepare, file and prosecute in good faith a joint petition, including supporting declarations, for approval of this Agreement; and

(c) Take no action adverse to this Agreement, the joint petition, the grant of the Mississippi Valley's application and the dismissal of TCOM's and Broadcast Properties' applications.

8. **Effective Date.** The merger among TCOM, Broadcast Properties and Bill shall become effective upon a final order(s) approving this Agreement, granting a petition for leave to amend to change the Statement of Legal Qualifications of Mississippi Valley, dismissing the applications of TCOM and Broadcast Properties, and granting the application of Mississippi Valley.

9. **Commission Approval.** Should the Commission or its delegatee for any reason refuse to approve this Agreement in its entirety within one year after the submission of the joint petition requesting such approval, then this Agreement shall become null and

void, and the parties applicant shall be entitled to resume prosecution of their respective applications before the Commission.

10. **Warranties.** The parties to this Agreement represent and warrant that they have the full right and legal power to execute and deliver this Agreement and to consummate the transactions contemplated hereunder. The parties further represent and warrant that they are not under any restrictions, contractual or otherwise, which prevent or preclude them from entering into this Agreement and from carrying out their obligations hereunder.

11. **Governing Law.** This Agreement is made pursuant to, and will be governed by and construed in accordance with, the laws of the State of Wisconsin and applicable regulations and policies of the Commission.

12. **Expenses.** Each party shall bear its own expenses relative to the transactions contemplated herein, including, without limitation, all fees and expenses of attorneys, accountants and consultants, incurred in the negotiation, preparation and performance of this Agreement and all transactions incident thereto; provided, however, that TCOM, Broadcast Properties and Bill shall share equally in the fees and expenses incurred by Gardner, Carton & Douglas in the preparation of this Agreement and supporting papers in a total amount not to exceed \$2,500.

13. **Specific Performance.** The parties recognize that in the event of a default by any party under this Agreement, money damages alone will not be adequate. In the event, therefore, of a default by any party, in addition to bringing suit for money or other

damages, the parties not in default shall be entitled to obtain specific performance of the terms of this Agreement. In any action to enforce the terms of this Agreement, the defaulting party waives the defense that there is an adequate remedy at law.

14. **Notices.** Any notice, requests, statement or other communications to be given hereunder to any party will be in writing and will be sent first-class mail, postage prepaid, addressed to the party as follows:

(a) TCOM, INC.:

Patricia A. Turner, Ph.D.
403 6th Avenue North
Onalaska, Wisconsin 54601

COPY to:

Stanley G. Emert, Jr., Esquire
Bryce & Emert
Post Office Box 52225
Knoxville, Tennessee 37950-2225

(b) BROADCAST PROPERTIES:

Philip Kelly
5490 Saratoga Road
Post Office Box 1280
Dubuque, Iowa 52001

COPY TO:

Christopher J. Reynolds, Esquire
Post Office Box 2809
Prince Frederick, Maryland 20678

(c) MISSISSIPPI VALLEY:

Howard G. Bill
625 19th Street, N.W.
Suite 507
Rochester, Minnesota 55901

COPY to:

James K. Edmundson, Esquire
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
(202) 408-7162

or mail to such other address or to such other person's attention as each party may designate by notice given in like manner. Any such notice, request, statement or other communication will be deemed to have been given three days after it was mailed.

15. **Successors and Assigns.** This Agreement will be legally binding upon and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns. No party shall undertake to assign their respective interests in this Agreement or in Mississippi Valley without the unanimous written consent of the other parties hereto.

16. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties hereto. All prior negotiations, agreements, rights and obligations between the parties hereto are superseded by this Agreement, and there are no representations, warranties, understandings, agreements, rights or obligations other than those expressly set forth herein. No modification, amendment, or extension of this Agreement or waiver of any provision of this Agreement, in whole or in part will be valid unless in writing, signed by all parties hereto.

17. **Headings.** The headings contained in this Agreement are inserted for purposes of convenience only and will be given no effect in the construction or interpretation of this Agreement.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement shall not be legally binding on any party until it has been duly executed by all parties.

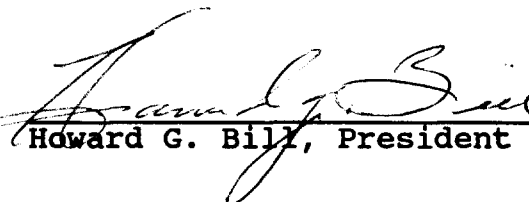
IN WITNESS WHEREOF, the undersigned have duly executed this instrument on the dates set forth below.

**MISSISSIPPI VALLEY
BROADCASTERS, INC.**

DATED:

May 4, 1992

By:


Howard G. Bill, President

TCOM, INC.

DATED:

By:

Patricia A. Turner, President

**BROADCAST PROPERTIES OF
LA CROSSE, INC.**

DATED:

By:

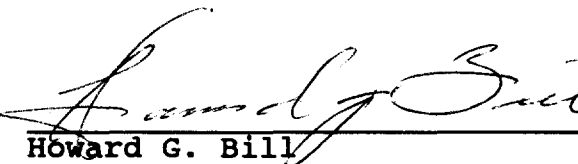
Philip Kelly, President

HOWARD G. BILL

DATED:

May 4, 1992

By:


Howard G. Bill

- 9 -

IN WITNESS WHEREOF, the undersigned have duly executed this instrument on the dates set forth below.

MISSISSIPPI VALLEY
BROADCASTERS, INC.

DATED:

By:

Howard G. Bill, President

TCOM, INC.

DATED:

May 4, 1992

By:

Patricia A. Turner, President

BROADCAST PROPERTIES OF
LA CROSSE, INC.

DATED:

By:

Philip Kelly, President

HOWARD G. BILL

DATED:

By:

Howard G. Bill

F:\BTV\ACT\28836.1

DRAFT April 30, 1992

IN WITNESS WHEREOF, the undersigned have duly executed this instrument on the dates set forth below.

**MISSISSIPPI VALLEY
BROADCASTERS, INC.**

DATED:

By: _____
Howard G. Bill, President

TCOM, INC.

DATED:

By: _____
Patricia A. Turner, President

**BROADCAST PROPERTIES OF
LA CROSSE, INC.**

DATED: 4/4/92

By:  _____
Philip Kelly, President

HOWARD G. BILL

DATED:

By: _____
Howard G. Bill

APPENDIX B

DECLARATION

I, Howard G. Bill, hereby declare under penalty of perjury under the laws of the United States of America that the facts recited below are true and correct:

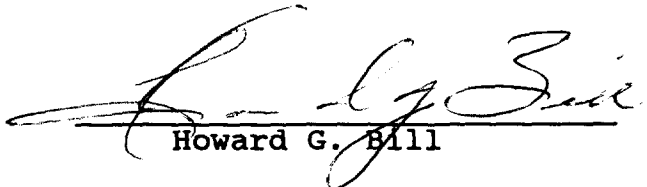
1. I am President of Mississippi Valley Broadcasters, Inc. (hereafter Mississippi Valley) an applicant for authority to construct and operate a new FM broadcast station on Channel 292C3 (106.3 MHz) at La Crosse, Wisconsin (File No. BPH-910118MA). Mississippi Valley has entered into a Merger Agreement with TCOM, Inc. (hereafter TCOM) looking toward the dismissal of TCOM's application. The Merger Agreement correctly reflects the agreement reached.

2. Neither Mississippi Valley nor any agent of mine has promised or paid any consideration to TCOM or its principals except for that described in the Merger Agreement.

3. Mississippi Valley's application was not filed for the purpose of reaching or implementing such a Merger Agreement.

4. The proposed settlement is in the public interest because it will conserve Commission resources, and pave the way for the earlier institution of new FM service to La Crosse, Wisconsin.

Executed this 4th day of May, 1992.


Howard G. Bill

DECLARATION

I, Howard G. Bill, hereby declare under penalty of perjury under the laws of the United States of America that the facts recited below are true and correct:

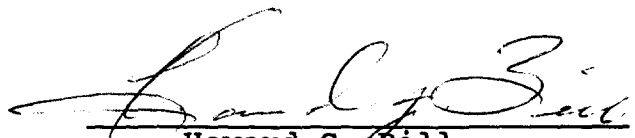
1. I am President of Mississippi Valley Broadcasters, Inc. (hereafter Mississippi Valley) an applicant for authority to construct and operate a new FM broadcast station on Channel 292C3 (106.3 MHz) at La Crosse, Wisconsin (File No. BPH-910118MA). Mississippi Valley has entered into a Merger Agreement with Broadcast Properties of La Crosse, Inc. (hereafter Broadcast Properties) looking toward the dismissal of Broadcast Properties' application. The Merger Agreement correctly reflects the agreement reached.

2. Neither Mississippi Valley nor any agent of mine has promised or paid any consideration to Broadcast Properties or its principals except for that described in the Merger Agreement.

3. Mississippi Valley's application was not filed for the purpose of reaching or implementing such a Merger Agreement.

4. The proposed settlement is in the public interest because it will conserve Commission resources, and pave the way for the earlier institution of new FM service to La Crosse, Wisconsin.

Executed this 4th day of May, 1992.


Howard G. Bill

DECLARATION

I, Philip Kelly, hereby declare under penalty of perjury under the laws of the United States of America that the facts recited below are true and correct:

1. I am President of Broadcast Properties of La Crosse, Inc. (hereafter Broadcast Properties) an applicant for authority to construct and operate a new FM broadcast station on Channel 292C3 (106.3 MHz) at La Crosse, Wisconsin (File No. BPH-910122MJ). Broadcast Properties has entered into a Merger Agreement with Mississippi Valley Broadcasters, Inc. (hereafter Mississippi Valley) looking toward the dismissal of Broadcast Properties' application. The Merger Agreement correctly reflects the agreement reached.

2. Neither Mississippi Valley nor any agent of Mississippi Valley has promised or paid any consideration to Broadcast Properties or its principals except for that described in the Merger Agreement.

3. Broadcast Properties' application was not filed for the purpose of reaching or implementing such a Merger Agreement.

4. The proposed settlement is in the public interest because it will conserve Commission resources, and pave the way for the earlier institution of new FM service to La Crosse, Wisconsin.

Executed this 4 day of May, 1992.


Philip Kelly

DECLARATION

I, Patricia A. Turner, hereby declare under penalty of perjury under the laws of the United States of America that the facts recited below are true and correct:

1. I am President of TCOM, Inc. (hereafter TCOM) an applicant for authority to construct and operate a new FM broadcast station on Channel 292C3 (106.3 MHz) at La Crosse, Wisconsin (File No. BPH-910122MA). TCOM has entered into a Merger Agreement with Mississippi Valley Broadcasters, Inc. (hereafter Mississippi Valley) looking toward the dismissal of TCOM's application. The Merger Agreement correctly reflects the agreement reached.

2. Neither Mississippi Valley nor any agent of Mississippi Valley has promised or paid any consideration to TCOM or its principals except for that described in the Merger Agreement.

3. TCOM's application was not filed for the purpose of reaching or implementing such a Merger Agreement.

4. The proposed settlement is in the public interest because it will conserve Commission resources, and pave the way for the earlier institution of new FM service to La Crosse, Wisconsin.

Executed this 4 day of May, 1992.



Patricia A. Turner

APPENDIX C

DECLARATION

I, Howard G. Bill, hereby declare under penalty of perjury under the laws of the United States of America that the facts recited below are true and correct:

1. I am President of Mississippi Valley Broadcasters, Inc. (hereafter Mississippi Valley) an applicant for authority to construct and operate a new FM broadcast station on Channel 292C3 (106.3 MHz) at La Crosse, Wisconsin (File No. BPH-910118MA).

2. Mississippi Valley has entered into a Merger Agreement with Broadcast Properties of La Crosse, Inc. (hereafter Broadcast Properties) and TCOM, Inc. (hereafter TCOM) looking toward a merger of interests, the dismissal of the applications of Broadcast Properties and TCOM and the grant of the application of Mississippi Valley.

3. The purpose of this Declaration is to set forth a full explanation and justification of the consideration exchanged in the Merger Agreement. I am the sole own of Mississippi Valley. Under the Merger Agreement, I will assign a 1/3 interest in Mississippi Valley to TCOM and a 1/3 interest in Mississippi Valley to Broadcast Properties, so that TCOM, Broadcast Properties and I will each have an equal interest in the corporation. I will also cause the By-Laws of the corporation to be amended to provide for a Board of Directors comprised of three members, one member to be appointed by TCOM, one member to be appointed by Broadcast Properties and one member to be appointed by me. As sole present director of Mississippi Valley, I will also elect Patricia A. Turner (a TCOM principal) as Chairman of the Board of Directors and Vice President